

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ANTONIO HENDERSON,

Plaintiff,

v.

MIKE DEWINE, et al.,

Defendants.

:

Case No. 2:24-cv-2006

Chief Judge Sarah D. Morrison

Magistrate Judge Elizabeth A.

Preston Deavers

:

**ORDER**

Antonio Henderson is an Ohio inmate that filed this *pro se* action against the warden and healthcare administrator at Belmont Correctional Institution, David Gray and Joseph Murphy. (ECF Nos. 1, 59.) The State of Ohio filed a Motion to Dismiss, and Mr. Henderson responded. (ECF Nos. 163, 164.) On November 5, 2024, the Magistrate Judge issued a Report and Recommendation (R&R, ECF No. 161.) recommending that: 1) the action be dismissed for failure to comply with the Court's Orders and failure to effectuate service; 2) the State of Ohio's Motion to Dismiss be denied as moot, and 3) the Court certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the R&R would not be in good faith and deny Mr. Henderson leave to file *in forma pauperis*. Mr. Henderson timely filed objections to the R&R. (ECF No. 173.)

As an initial matter, Mr. Henderson is also seeking leave to amend the Amended Complaint to name Mr. Gray and Mr. Murphy as Defendants. (ECF No. 174.) However, they have already been properly named in this action. Therefore, the Motion for Leave to Amend is **DENIED as futile**.

Turning to the Magistrate Judge's R&R, if a party objects to a report and recommendation, the Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

On November 16, 2020, Mr. Henderson and fifteen inmates filed this action against eleven individuals connected to BCI for their grievances related to the COVID-19 pandemic. (ECF Nos. 1, 25.) Three years later, Mr. Henderson was severed from the original multi-plaintiff case. (ECF No. 129.) The Court's April 2024

Order allowed him to pursue his claims against Mr. Gray and Mr. Murphy in a separate action. (ECF No. 153.) By May 9, 2024, Mr. Henderson had not attempted service, so the Court ordered him to do so within thirty days. (ECF No. 154.) A few days later, Mr. Henderson incorrectly filed one summons form, jointly addressing Mr. Gray and Mr. Murphy. (ECF No. 158.) On June 6, 2024, Mr. Henderson filed summons forms for each Defendant, however, he failed to complete the address section on the forms. (ECF No. 160.) Mr. Henderson also failed to comply with the Court's orders regarding discovery requests and his Motions for Appointment of Counsel. (ECF Nos. 158, 162, 167.) Likewise, his Notice Requesting Service was deficient. (ECF No. 166.)

Five more months passed without Mr. Henderson serving Mr. Gray or Mr. Murphy. So, the Magistrate Judge put on a Report and Recommendation to dismiss this action for failure to serve and comply with the Court's Orders and the rules of civil procedure. (R&R.) The Magistrate Judge explained that the Court provided him with clear instructions on how to effectuate service, to no avail. (*Id.*) The Court found Mr. Henderson's failure to effect service was willful. (*Id.*)

Mr. Henderson objects to the R&R, alleging that he complied with the Court's orders to file the appropriate summons forms. (Obj., ECF No. 173.) He neither addresses the mistakes with his forms nor rebuts the Magistrate Judge's conclusion that his failure to comply and serve Mr. Gray and Mr. Murphy was willful. (*Id.*) Mr. Henderson attached the summons and USM-285 forms to his objection, but he again failed to properly complete the summons form. (ECF No. 173-1.)

While the Court has discretion to excuse a mistake, Mr. Henderson's *pro se* status does not "discharge him from adhering to the requirements of the Federal Rules of Civil Procedure nor the Local Rules for this District." *Benzaoual v. OhioHealth Corp.*, No. 2:19-CV-3366, 2021 WL 2712174, at \*3 (S.D. Ohio July 1, 2021) (Marbley, J.) (internal citation omitted). The Court finds no error in the Magistrate Judge's conclusions or reasoning. Mr. Henderson's objections provide no basis to conclude otherwise.

Accordingly, Mr. Henderson's Motion for Leave to Amend is **DENIED** as futile. Mr. Henderson's Objection is **OVERRULED**, and the Magistrate Judge's Report and Recommendation is **ADOPTED** and **AFFIRMED**. The State of Ohio's Motion to Dismiss is **DENIED** as moot. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith. The case is **DISMISSED with prejudice**. The Clerk is **DIRECTED** to **TERMINATE** this case.

**IT IS SO ORDERED.**

/s/ Sarah D. Morrison  
**SARAH D. MORRISON, CHIEF JUDGE**  
**UNITED STATES DISTRICT COURT**